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April 6, 2020

Via ECF

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court, Southern District of New York
500 Pearl Street, Courtroom 17A
New York, New York 10007-1312

Re: Jose Ramirez v. M.L. San Jose Enterprises, Corp.
(d/b/a Liberato Restaurant), SDNY Case No. 19
Civ. 3429 (LGS)

Dear Judge Gorenstein,

This office represents the Plaintiff in the above referenced matter. This action involves claims by my client, a former food delivery worker employed by Defendants, that he was not paid minimum and overtimes wages.

Pursuant to District Court Judge Schofield's February 4, 2020 Order, Dkt. No. 54, I submit this letter motion, jointly, with counsel for Defendants, seeking to extend the fact discovery deadlines set forth in the Court's Scheduling Order which was filed on March 31, 2020. (Dkt. No. 65.)

Plaintiff has made two applications seeking adjournments of the initial pretrial conference, which Judge Schofield granted on June 25, 2019, and June 27, 2019. Additionally, Plaintiff made one application for extensions of time to publish notice to prospective FLSA collective action members and the parties have made one joint application seeking an expansion of the discovery deadlines, both of which were granted on November 12, 2019, and December 2, 2019. (Dkt. Nos. 43 and 48.) The parties also made a joint application on February 20, 2020, seeking to expand the discovery deadline, from February 27, 2020, to March 26, 2020, which Your Honor granted.

Moreover, on March 20, 2020, Defendants filed a request addressed to Judge Schofield¹ seeking a 60-day extension of discovery on behalf of the parties to complete discovery and explained that the circumstances created by COVID-19 had made discovery, including depositions, extremely difficult for the parties. The Court granted a 21-day extension and reminded the parties that the federal rules permit video depositions.

¹ Defendants inadvertently addressed the March 20, 2020 application to Judge Schofield instead of Your Honor; on February 4, 2020 Judge Schofield issued an order directing general pre-trial matters to Your Honor.

As Your Honor should know, on March 7, 2020, New York State Governor Cuomo declared a State disaster emergency for the entire State of New York in anticipation of large scale community and travel related transmission of COVID-19. N.Y. Exec. Order No. 202 (March 7, 2020). On March 20, 2020, Governor Cuomo ordered all non-essential businesses shut down, which includes law firms, in an effort to cope with the COVID-19 disaster emergency. To date, almost 3,000 people in New York State have died since March 14, 2020, and far more deaths are anticipated. N.Y. Exec. Order No. 202.6 (March 14, 2020); *see, Officials Announce New York's First Two Deaths Linked to Coronavirus*, N.Y. Times, <https://www.nytimes.com/2020/03/14/nyregion/coronavirus-ny.html#link-18dbab45> (last visited April 3, 2020); *see, N.Y. Virus Deaths Double in Three Days to Almost 3,000: Live Updates*, N.Y. Times, <https://www.nytimes.com/2020/04/03/nyregion/coronavirus-ny-updates.html> (last visited April 3, 2020). For your convenience, we are providing the Court with copies of the aforementioned Executive Orders.

Notably, the Governor also ordered the closure of school districts in New York State on March 16, 2020, and by virtue of this Order, the Brooklyn Dioceses, likewise, ordered the closure of Catholic Schools in Brooklyn and Queens. N.Y. Exec. Order No. 202.4 (March 16, 2020). I have two daughters, ages 4 and 5, who are students at St. Joan of Arc Catholic School, in our neighborhood, Jackson Heights, Queens – currently the epicenter of the COVID-19 pandemic. As such, this adds to the difficulty of practicing law in any capacity to the extent that I have assumed a significant share of the childcare responsibilities by virtue of my wife's employment, which requires her involvement during regular business hours, i.e., 8:45 p.m. – 5:00 p.m. Moreover, my 5-year old daughter and I are at risk of severe illness from COVID-19 due to underlying medical conditions; hence, our household takes the risks associated with community transmission seriously, especially because of where we live.

It is against this backdrop that the parties have attempted to schedule depositions via video conference. To elaborate further, our office contacted Lexitas Reporting in an effort to schedule video depositions and was informed that each deposition participant must have an email address, internet access, a computer and/or a device with a camera. Thereafter, when attempting to arrange depositions, we learned that Defendant, Antonio Liberato, does not have an email account, nor does he own a computer or have internet access in his home. Moreover, Mr. Wendy Bueno, a non-party witness, likewise, does not own a computer or has internet access in his home. Finally, Plaintiff does not have an email account, nor does he own a computer or has internet access in his home.

The parties respectfully request an expansion of the discovery deadline, from March 13, 2020, to May 21, 2020. Please note that the parties are scheduled to participate in mediation on May 14, 2020, and hope to resolve this matter at that time. Thank you in advance for your consideration.

Very truly yours,


Fausto E. Zapata, Jr.

C: M. Restituyo
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